

# **EXHIBIT 1 (Part 1)**

COPY

IN THE CALIFORNIA SUPERIOR COURT  
IN AND FOR THE COUNTY OF LOS ANGELES

Kenneth Dowell  
Petitioner

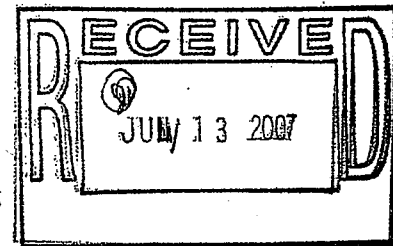
v.

Board of Prison Hearings  
Respondent

CASE NO.

CHARGED OFFENSE NUMBER IN THE  
SUPERIOR COURT OF LOS ANGELES  
#A-454394 (1982)

WRIT OF HABEAS CORPUS



Kenneth Dowell  
C-78669, 1-N-26U  
San Quentin Prison  
San Quentin, CA:  
94974

VERIFICATION

STATE OF CALIFORNIA )  
COUNTY OF MARIN )

(C.C.P. section 446 & 2015.5; 28 U.S.C. section 1746)

I, KENNETH DOWELL, declare under penalty of perjury that:

I am a party in the above-entitled action; I have read the foregoing documents and know the contents thereof; and the same is true of my own knowledge, except as to matters stated therein upon information and belief, and as to those matters I believe they are true.

Executed this 16th day of April 2007, at San Quentin State Prison, San Quentin, California 94974.

S/S

*Kenneth Dowell*  
Kenneth Dowell

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IN THE SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES

Kenneth Dowell  
Petitioner

v.

Board of Prison Hearings  
Respondent

Case No.

WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner, Kenneth Dowell, was convicted pursuant to Penal Code § 187, murder in the second degree. On March 24, 1982, petitioner acting in self-defense, killed James Winnet, the boyfriend of petitioner's wife.

Petitioner's wife complained that her boyfriend was attempting to trade her vehicle for a van and motor cycle. Petitioner acting on her behalf, took his wife to Parkman's Bail Bondsman, the place where the vehicle was to be traded, however, the establishment was closed. On their way back to Norwalk, California, petitioner noticed his wife's boyfriend following them, so he drove into the Zody's parking lot, and as he did, the victim pulled up behind them. As petitioner stepped from his vehicle, Winnet shot at him. Petitioner in an act of self-defense retrieved a hand gun from his pick

up and fired back. The victim was shot four or five times. After the shooting, petitioner waited for the police, and according to the probation officer's report, petitioner stated, "I never had any intention of killing anyone. I'm sorry it happened." (Exhibit A p.10.)

The Board hearing record is in conflict with the foregoing. The District Attorney's representative stated: "In regards to his statements in regards to the crime, he claims self-defense, but the evidence is against him,..." (Exh. B p.73.) The District Attorney further influences the Board by claiming that petitioner kidnapped his wife. (Exh. B p.74) However, according to the probation report, petitioner's wife made it clear that she was not kidnapped. (Exh. A. pp.4-5) The Board Commissioner read into the record the Statement of Facts from the Probation Officer's Report, then found contrary to the probation officer's report (Exh. B p.89) when stating, "he (the victim) tried to give up." There is nowhere within the probation officer's report indicating the victim was trying to "give up." (Exh. B p.10 also see Exh. A p.10)

It will be pointed out within the Board Hearing Record, that there are numerous contradictions. It will also be shown that the Board of Prison Hearings held nothing more than a summary hearing, and failed to address California Code of Regulations, title 15 § 2402, and the factors therein in ~~relation to finding suitability or unsuitability in a parole~~ hearing, which is required by law.



Moreover, the Board of Prison Hearings used the same reasons to deny parole on six (6) previous parole consideration hearings, and has failed to take into account that petitioner has for twenty-five years, maintained a stellar prison record.

The specific factors applicable to the Board's decisions are set forth in Penal Code section 3041 and the Board's regulations (promulgated pursuant to subdivision (a) of section 3041) established criteria for determining suitability for release on parole. (Cal. Code Regs., Tit. 15 [CCR-15] section 2402.) The factor statutorily required to be considered, and of most importance, is public safety. As stated in subdivision (b) of Penal Code section 3041, the Board "shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual..." The factors required to be considered by the Board regulations are for the most part, specified in section 2402.

On November 30, 2006, Petitioner appeared before the Board of Prison Hearings (BPH). The board denied Petitioner parole for three years for the following reasons: (1) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering, and the offense was carried out in a dispassionate manner such as an execution style murder. (2) The motive for the crime was

inexplicable in relation to the offense. (3) History of unstable of tumultuous relationships. (4) Parole plans/Failed to upgrade vocationally. (5) Need self-help or therapy. (6) Psychological report. (The Board chose to set aside the most recent psychological report dated, May 2, 2006, which supported parole, and use a 2000 psychological report.)(Exhibit B, pp.88-98.)

There are no negative differences between the 2000 board hearing and the November 30, 2006, board hearing. There is, however, positive advances by petitioner. Petitioner has not received disciplinary write-ups. Petitioner continues to take personal responsibility for his crime. Petitioner has viable parole plans. Petitioner continues to participate in self-help programs (AA and Positive Attitude). The psychological assessment of May 02, 2006 is supportive of release. "Petitioner would pose a low risk if he were to be released at this time. (See Exhibit C.)

The Board's decision is not in accord with a proper reading of the relevant statutes, regulations and case law. Although the "some evidence" standard of review provides broad discretion to the Board, it is in fact bound by three requirements: (1) the evidence must be drawn from the factors enumerated in the statutory and regulatory framework; (2) the evidence must be deemed relevant and reliable; and (3) the evidence must reasonably speak to whether the inmate poses a current public safety threat.

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Although there is no question that under Rosenkrantz

and Dannenberg the statutory "commitment offense" factor is relevant, and at times may be enough to deny parole, neither Rosenkrantz and Dannenberg stands for the principle that the commitment offense is always enough by itself. In fact, both cases affirmatively state that reliance of the commitment offense alone might in some circumstances rise to the level of a due process violation. That conclusion is consistent with the concern raised by the Ninth Circuit in Biggs v. Terhune, 334 F.3d 910 (9th Cir.2003): that reliance on an ever-frozen, unchanging factor - such as the commitment offense - in denying parole may in certain instances violate due process.

A second degree murder (the offense in this case) requires malice - an element which by its nature suggests a certain degree of cruelty and callousness - the facts used by the Board must show the crime is beyond the minimum elements for a second degree murder and establish that the crime is in fact especially heinous, atrocious or cruel. As will be shown, the Board's findings were not in accord with In re Rosenkrantz, 29 Cal.4th 616; Ronsenkrantz v. Marshall, 444 F.Supp.2d 1063; In re Elkins, case no. A111925, 10/31/06 First Appellate District and In re Scott, 119 Cal.App.4th 871.

THE BOARD OF PRISON HEARINGS  
FAILED TO UPHOLD  
THE SOME EVIDENCE REQUIREMENTS  
RESULTING IN A VIOLATION OF  
PETITIONER'S DUE PROCESS

While there is no federal constitutional right to parole, (Greenholtz v. Inmates of Nebraska Penal (1979) 442 U.S. 1, 11-12) both federal and state courts have recognized that California's parole scheme bestows on prisoners a cognizable liberty interest in parole that is protected by due process. Biggs v. Terhune (9th Cir. 2004) 334 F.3d 910, 914; Armstrong v. Davis (9th Cir. 2001) 275 F.3d 849, 864; McQuillion v. Duncan (9th Cir. 2002) 306 F.3d 895, 903; and In re Rosenkrantz (2002) 29 Cal.4th 616, 655-659 [prisoner's have a liberty interest in parole protected by due process.]

Within the context of parole consideration in California, due process requires that "some evidence" support a decision by the Board to deny parole. (Superintendent v. Hill (1985) 472 U.S. 445, 456; Biggs, supra, 334 F.3d at 915; Rosenkrantz, supra, 29 Cal.4th at 667; In re Smith, 109 Cal.App.4th at 501-503; In re Capistran (2003) 107 Cal.App.4th 1299, 1305; In re Ramirez (2001) 94 Cal.4th 549, 564; In re George Scott (2005) DJDAR 12450.)

Accordingly, this Court must undertake a fact specific inquiry of whether there is evidence to deny parole under California law. (McQuillion, supra, 306, F.3d at 904-906; Biggs, supra, 334 F.3d at 915.) Specifically, the Court must determine whether there is some evidence that petitioner would

currently present an "unreasonable risk of danger to society" if released on parole. (Cal.Code Regs., tit. 15 §2402(a); Penal Code, §3041(b)).

#### THE BPT HEARING RECORD

##### a. Consequences of actions and magnitude

The Rosenkrantz court held the "some evidence" standard is not met when the Board minimizes culpability. It did so after (1) delving into the entire record before the Board as to the relevant issue in question; (2) specifically reviewing evidence that the Board had omitted in making its determination; and (3) assessing the reasonableness of the Board's interpretation of the entirety of these circumstances.

The court will find after reviewing all the evidence before the Board on this issue, no reasonable interpretation of the circumstances would justify finding "some evidence." Indeed, the Board's failure to consider all relevant evidence is consistently deemed, in a variety of contexts, to be arbitrary and capricious and abuse of discretion. See e.g., Envil. Def. Ctr, Inc. v. EPA (2003) 344 F.3d 832, 858 n.35 (holding federal agency has acted in arbitrary and capricious fashion if the agency has "entirely failed to consider an important aspect... [or] its decision... runs counter to the evidence.") According to People v. Neol (2005) Cal.App. Lexis 711, at 148, "The trial Court was not permitted to substitute its conclusion... under circumstances where it could not explain

how this... bit of evidence trumped the otherwise overwhelming counterrailing credible evidence..." This is the same as the Board has done in petitioner's case.

The evidence relied on by the Board must be "reliable," (Regs.. §§ 2402, subd. (b), 2281, subd. (b)); it must have "'some indicia of reliability.'" (In re Scott (2005) 133 Cal.App.4th 573, 591, 34 Cal.Rptr.3d 905; Biggs, 334 F.3d at 915; McQuillon, 306 F.3d at 904; Jancsek, 833 F.3d at 1390.), Additionally, the requirement of procedural due process embodied in the California Constitution (Cal. Const., art. I, § 7, subd. (a)) places some limitations upon the discretionary authority of the Board. (In re Rosenkrantz (2002) 29 Cal.4th 585, 655. A prisoner is entitled to "an individualized consideration of all relevant factors.") (In re DeLuna, 126 Cal.App.4th at p. 591.) The Board's decision "must reflect an individualized consideration of the specified criteria and cannot be arbitrary or capricious," and this requirement was not accomplished during petitioner's hearing. There is nowhere in the record that shows the Board used the California Code of Regulations, title 15 § 2402, and individually cited each factor in relation to their findings. In order for the Board to meet procedural due process embodied in the California Constitution it must address all fifteen (15) factors, and not give six (6) turgid reasons without implementing the applicable factors for each one.

Petitioner will now address each in numerical order:

**(1) Especially atrocious, dispassionate and calculated**

The California court implemented what is known as the "beyond the minimum necessary" in relation to the death of a victim (In re Rosenkrantz, 29 Cal.4th at 683.); and the question here is, what evidence indicates that any particular second degree murder was somehow "beyond the minimum necessary to sustain a conviction?" In other words, what evidence indicates the commitment offense was "especially atrocious, dispassionate and calculated," given that there typically must be a finding of some level of heinousness, in order for anyone to have been convicted of second degree murder in the first place? Cal.Code Regs. tit. 15 § 2402(c)(1); Smith 114 Cal.App.4th at 366-67 (noting that "all second degree murders by definition involve some callousness-i.e., lack of emotion or sympathy, emotional insensitivity, indifference to the feelings and suffering of others."

In order for a crime to be "atrocious, dispassionate and calculated" and meet the "minimum necessary to sustain a conviction," the offense must have been carried out execution-style. Rosenkrantz, supra, 29 Cal.4th at p. 683. Moreover, there had to be multiple victims attacked, injured or killed in the same or separate incidents. ( See Cal.Code Regs, tit. 15 § 2402(a)(1)(A).)

The court in In re George Scott, 133 Cal.App.4th (#) (Oct. 18, 2005) held "[it] is necessary to remember that denial of parole based upon the nature of the offense may

rise to the level of a due process violation, as where no circumstances of the offense reasonably could be considered more aggravated or violent than the minimum necessary to sustain a conviction for that offense." (Rosenkrantz, supra, 29 Cal.4th at p.683.) Therefore an unsuitability determination must be predicated on "some evidence that the particular circumstances of [the prisoner's] crime-circumstances went beyond the minimum elements of his conviction-indicated exceptional callousness and cruelty with trivial provocation, and thus suggested he remains a danger to public safety." (In re Dannenberg, supra, 34 Cal.4th at p. 1098.) The Scott court went on to explain comparisons, "[in] Rosenkrantz... a full week of careful preparation, rehearsal and execution" took place, "[the] prisoner, fired 10 shots at close range from an assault weapon and fired at least three or four shots into the victim's head as he lay on the pavement, carried out the crime with planning, sophistication or professionalism," is more aggravated or violent, and meets the "minimum necessary." (Rosenkrantz, at p.678.) Similarly, there was evidence of premeditation in In re Lowe (2005) 130 Cal.App.4th 1405, which also involved a second degree murder conviction. There the prisoner purchased the gun shortly before the murder, entered his victim's bedroom in the middle of the night while he was asleep, unsuspecting, and in a special relationship of confidence and trust with his killer, 'shot him five times in the head and chest, execution style.' (Id. at p. 1414.) As this court stated,



this evidence showed the murder 'was a cold-blooded execution' and that the prisoner's 'egregious acts [were] far more aggravated than the minimum necessary to sustain a second degree murder conviction.'" (In re Scott, 119 Cal.App.4th 871, 889-892; In re Van Houten (2004) 116 Cal.App.4th 339; Rosenkrantz v. Marshall, 444 F. Supp.2d 1063; In re Dannenberg, 34 Cal.4th at p. 1098.))

Moreover, the circumstances of petitioner's crime are significantly less egregious than those in other cases in which the nature of the offense was found to support a finding of suitability. (See Rosenkrantz v. Marshall, supra, 444 F. Supp.2d 1063.)

There is no evidence petitioner "tormented, terrorized, or injured his victim before ... shooting him, or that he gratuitously increased or unnecessarily prolonged his pain and suffering." (See In re Scott, 119 Cal.App.4th 871, 892.) Because the relevant evidence shows no more callous disregard for human suffering than is shown by most second degree murder offenses, the Board's use of this factor to conclude that petitioner committed his offense in an "especially atrocious dispassionate and calculated manner" and that the murder was "execution style," is arbitrary and capricious. (In re Rosenkrantz, supra, 29 Cal.4th at 655.)

Petitioner's commitment offense was a result of stress. The stress came from his wife leaving him, and taking his two children away, for the love of another man. The fear

came as a result of the victim shooting at him. (Exh. A p.10) These circumstances are almost identical to those in In re Scott, supra, 119 Cal.App.4th 871, 894. ([t]he record shows that his unpremeditated offense resulted from some provocation on the part of the victim ... the circumstances are similar to those which have reduced criminal liability from murder to manslaughter, as the emotional pain caused by the departure or infidelity of a loved one is often seen by juries as diminishing self-control.) (see, e.g., People v. Bridgehouse (1956) 47 Cal.2d 406, 414 [303 P.2d 1018].)

The record is clear, petitioner did not plan, rehearse and commit the offense with sophistication and professionalism. Thus the Board's denial does not meet the "minimum necessary" standard as set forth in Rosenkrantz, or the "some evidence" standard in Superintendent v. Hill, supra, (1985) 472 U.S. 445.

## (2) Inexplicable and trivial

As to "inexplicable and trivial," the Scott court continued to say, "To fit the description of very trivial in relation to the offense requires comparisons; the motive must be materially less significant (or more "trivial") than those which drive people to commit the offense in question, and therefore more indicative of a risk of danger to society if the prisoner is released than is ordinarily presented." (119 Cal.App.4th at 894.) If the Scott court's reasoning is

correct, the "inexplicable and trivial" standard does not meet the "some evidence" criteria in the Board's findings - for the victim's actions, when shooting at petitioner, were directly related to petitioner's conduct of acting in self-defense.

### (3) History of unstable, tumultuous relationships

The Board found "Petitioner has a history of assaultive behavior and unstable, tumultuous relationship with others (Exh. B p.89). The Board may consider misconduct only if it is reliably documented. Within Penal Code § 3043.5, the Board is required when deciding whether to release the person on parole, to "review all information received... to insure that... all current and past convicted offenses have been given adequate consideration." (Emphasis added.) In re Dannenberg, 34 Cal.4th at 1084.

California Code of Regulations, title 15 § 2322 sets forth the criminal history to be considered by the Board, to which, if the crime is over five years old it cannot be used to extend the total period of confinement.

Cal.Code of Regs, tit. 15 § 2326 requires the circumstances surrounding the charge to be reliably documented and an integral part of the crime for which the prisoner is currently committed to prison.

~~The BPH when finding petitioner unsuitable for parole~~  
 stated: "your record of public drunkenness, drunk driving,

brandishing a firearm and pandering, all have led up to the life crime." (Exh. B p.89) First, how does drunk driving lead to murder? Second, the record explains the brandishing charge, to which petitioner makes it clear that the weapon was a knife, not a firearm. (pp.64-65) And third, the pandering charge has nothing to do with murder, nor is it a violent crime against the victim, which is required by Cal.Code of Regs, tit. 15 § 2402(c)(2). Moreover, the Board's "reliance on an unchanging factor, the circumstance of the offense and conduct prior to imprisonment, runs contrary to rehabilitative goals espoused by the prison system, and resulted in a due process violation." In re Rosenkrantz, 29 Cal.4th at 689,

**(4) Petitioner needs to upgrade vocationally/Needs parole plans**

One of the factors under Cal.Code Regs, tit. 15., 15. § 2204(d)(8) in finding a prisoner suitable for parole is "the prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release." (Emphasis added.) It is not required to have both, one is sufficient.

The record is indisputable, petitioner received a certificate of achievement in the Maintenance and Operation of High Pressure Boilers, Vocational Machine Shop and Millwright Machinist. (Exh B pp.31-33)

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As to parole plans, the Court will find petitioner submitted letters of support from his brother in Oregon, and

an Aunt in the Los Angeles area. (Exh. B pp.46-47) The Board, however, refused to accept the parole plans from Oregon, speculating that petitioner's brother had weapons in his house. This analogy is ludicrous. Guns can be acquired in any city within California, and for the Board to reason that petitioner cannot be paroled to his brother's house because he might have a gun in the house is without merit. Moreover, during petitioner's previous board hearing, the commissioner encouraged this petitioner to obtain "an interstate transfer to Oregon!" (Exh. D p.68)

The United States Congress in 1934 (Penal Code § 11177) set forth an act granting the consent to any two or more states to enter into agreements of compacts. Penal Code § 11177(c) states: "That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense... and placed on... parole to reside in any other state party to this compact... (a) [If] such person is in fact a resident or has his family residing within the receiving state..." Also see Penal Code § 3003(b)(i) "An inmate may be paroled to another state pursuant to any law."

As previously mentioned, the title 15 § 2402 subd.(d)(8) only requires to have parole plans or a marketable skill. Not both.

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5) Petitioner's need for further beneficial self-help and therapy

The Court is directed to the Cal.Code of Regs., tit. 15 § 2402(c)(5) where it is clear "The prisoner [must have] a lengthy history of severe mental problems related to the offense." There is nowhere within the record showing petitioner has a mental history related to the offense. Nor is there anywhere within the title 15 § 2402, requiring a prisoner to participate in self-help programs.

More importantly, the Board Commissioner recognizes that self-help programs may not be available (Exh. B p.97), and fails to recognize the psychological report at page 4, where Doctor Inaba addresses self-help: "It would seem that in the intervening years, Mr. Dowell has participated in self-help and religious activities that have given him the skills to conduct himself in a sober and non-violent manner across settings. He regularly attends AA and is on the waiting list for Kairos." The Board during petitioner's July 2003 hearing commended petitioner for his participation in self-help therapy programs. (Exh. D p.65) How is it, then, that the 2006 Board can find petitioner unsuitable for parole for failing to attend self-help programs?

(6) The Board found the Psychological report is not supportive  
~~of release~~

The Court is directed to petitioner's psychological

evaluation, where Doctor Inaba states, "He has no present dynamic risk factors such as loss of control or impulsive behavior, Lack of compassion, anger, or paranoid or violent thoughts." Under V. Clinician Comments and Summary, Doctor Inaba also found petitioner's "risk of violent recidivism would be low." (Exh C., May 02, 2006, psychological evaluation at page 4)

The Board chose to reject the foregoing and put itself in the position of a Psychologist (Exh. B pp.90-91) and use their own reasoning to deny parole, then assess petitioner as a risk to society.

The State Supreme Court in People v. Burnick, 14 Cal.3d 306, 327; 121 Cal.Rptr. 488; 535 P.2d 352, found "The evidence, as well as the consensus of opinion by responsible scientific authorities, is now unequivocal." (Diamond, the Psychiatric Prediction of Dangerousness (1975) 123 U.Pa. L.Rev. 439, 451.) In the words of spokesmen for the psychiatric profession itself, "Unfortunately, this is the state of art. Neither psychiatrists nor anyone else have reliably demonstrated an ability to predict future violence or 'dangerousness.' Neither has any special psychiatric 'expertise' in this area been established." (Task Force Report, Clinical Aspects of the Violent Individual (American Psychiatric Assn., 1974) p.28) And the same studies which proved the inaccuracy of psychiatric ~~predications have demonstrated beyond dispute the no less~~ disturbing manner in which such prophecies consistently err;

they predict acts of violence which will not in fact take place ("false positives"), thus bringing as "dangerous" many persons who are in reality totally harmless. (See generally *id.* at pp.23-30.)

It is hard to believe that the Board would set aside a recent Psychological evaluation (May 2006), which support parole, then use an evaluation from September 2000 (Exh. B p.90) to find unsuitability for parole.

What may be of further interest to the Court is that psychiatric evaluations and, "The recommendation shall be submitted to the Director of Corrections and shall not be effective until approved by the director." Penal Code § 5079. In that this is the case, petitioner's psychological evaluations are invalid - for the Director of Corrections did not review and approve the recommendations.

**THE BPH IS REQUIRED TO USE THE  
PREPONDERANCE OF EVIDENCE STANDARD  
DURING A PAROLE HEARING**

The California Board of Hearings' failure to follow its procedures is fundamentally unfair, and a violation of the Fifth Amendment.

The United States Constitution requires states and their agencies to comply with all the procedures they establish. Carson v. Block, 790 F.2d 562, 565-6. A violation of the BPH's rules authorizes relief in this proceeding if the rules are themselves essential components of due process of law - that



is, if the procedures used by the BPH violates the Constitution. Under 18 U.S.C. § 4218, a parole board's failure to follow administrative rules and regulations violates constitutional provisions. Turner v. Henman, 829 F.2d 612.

Numerous federal courts, including the United States Supreme Court have found "an inmate is entitled to expect the Bureau of prisons to follow its own policies." Wolff v. McDonnell, 418 U.S. 539, 557, 94 S.Ct. 2963, 2925, 41 L.Ed.2d 935. In re Rosenkrantz (2000) 80 Cal.App.4th 409, 424-425 also found the Board must determine parole suitability by following its own rules and regulations.

According to Caldwell v. Miller, 790 F.2d 589, 09, "An agency must conform its actions to the procedures that it has adopted." See Pearce v. Director, Office of Workers' Compensation, 647 F.2d 716; VanderMolen v. Stetson, 571 F.2d 617, 624; see also Morton v. Ruiz, 415 U.S. 199, 235, 94 S.Ct. 1055, 1074, 39 L.Ed.2d 270 (Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.) Vitarelli v. Seaton, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012; Services v. Dulles, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403. "An inmate, too, has the right to expect prison officials to follow its policies and regulations." Anderson v. Smith, 697 F.2d 239. Here the proper procedure for the BPH and courts to follow is the "preponderance of evidence" standard within the Cal.Code of Regs. tit. 15 § 2000(50).

Section 2000(a) states: "The following rules of construction apply to the regulations contained in this division..." At the end of § 2000 reference is made to Penal Code § 3041 - thus all prison inmates have a liberty interest pursuant to Cal.Code of Regs. tit. 15 § 2000(50) preponderance of evidence, and not the more stringent "some evidence" standard, which is not mandated by the California State Legislature.

Whenever an abuse of discretion is made by an administrative agency, reviewing courts cannot set it aside unless the court has a definite and firm conviction that a clear violation in judgment has not taken place. Taylor v. United States Parole Commission, 734 F.2d 1152, 1154; Bolani v Immigration & Naturalization Service, 669 F.2d 1157, 1160; McBee v. Bonner, 296 F.2d 235, 237.

Although numerous courts are using the "some evidence" standard as set forth in Superintendent v. Hill, supra, 4/2 U.S. 445, and In re Rosenkrantz supra, 29 Cal.4th 616, the "some evidence" standard is in direct conflict with the Cal.Code of Regs. tit. 15 § 2000(50). The fact is, the law is what it is, and the "some evidence" standard should not be allowed to supersede the mandated preponderance of evidence within the Cal.Code of Regs. title 15 § 2000.

If the Legislature intended for the "some evidence" to be the applicable standard, the Cal.Code of Regs. tit. 15 § 2000(50) would have been repealed.

The Cal.Code of Regs. title 15 § 2402 set forth six (6) factors in finding an inmate unsuitable for parole: (1) Commitment Offense; (2) Previous Record of Violence; (3) Unstable Social History; (4) Sadistic Sexual Offenses; (5) Psychological Factors and (6) Institutional Behavior. § 2402 mandates nine (9) "Circumstances Tending to Show Suitability" which are: (1) No Juvenile Record; (2) Stable Social History; (3) Signs of Remorse; (4) Motivation for Crime; (5) Battered Woman Syndrome; (6) Lack of Criminal History; (7) Age; (8) Understanding and Plans for Future and (9) Institutional Behavior.

As shown, there are a total of fifteen factors the Board must use to find suitability or unsuitability. If the Board implements the Cal.Code of Regs. title 15 § 2000(50) and uses the preponderance of evidence standard, eight of the above mentioned factors is required to find petitioner unsuitable for parole, not five as was done during the hearing.

According to the Cal.Code of Regs. title 15 § 2281(d)(7) the parole suitability determination process only requires that part one, or part two of § 2402 be satisfied, which is in conflict with the policy of using just one factor to deny parole.

### CONCLUSION

The Board found during petitioner's seventh (7th) parole consideration hearing that petitioner was unsuitable for parole based upon the gravity of the crime. The Ninth Circuit and California Supreme Court made it clear that "[a] continued reliance in the future on an unchanging factor, the circumstance of the offense and conduct prior to imprisonment, runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation." Biggs, 334 F.3d at 917; Rosenkrantz, supra, 29 Cal.4th at 689.)

In the circumstances of this case, the Board's reliance upon the facts of petitioner's crime and his commitment offense as a reason to deny parole after 25 years of incarceration, violates due process. First, a continued reliance upon these unchanging factors makes a sham of California's parole system and amounts to an arbitrary denial of petitioner's liberty interest. Second, the circumstances of the crime and petitioner's criminal history do not amount to some evidence supporting the conclusion that petitioner poses an unreasonable risk of danger if released.

As the Central District Court in Rosenkrantz v. Marshall, 444 F. Supp.2d 1063, 1081 stated:

Whether the facts of the crime of conviction or other unchanged criteria, affect the parole eligibility decision can only be predicated on the "predictive value" of the unchanged circumstance. Otherwise, if the unchanged circumstance per se can be used to deny parole eligibility, sentencing is taken out of the hands of the judge and totally

deposited in the hands of the BPT. That is, parole eligibility could be indefinitely and forever delayed based on the nature of the crime even though the sentence given set forth the possibility of parole - a sentence given with the facts of the crime fresh in the mind of the judge. While it would not be a constitutional violation to forego parole altogether for certain crimes, what the state cannot constitutionally do is have a sham system where the judge promises the possibility of parole, but because of the nature of the crime, the BPT effectively deletes such from the system. Nor can a parole system, where parole is mandated to be determined on someone's future potential to harm the community, constitutionally exist where despite 20 or more years of prison life which indicates the absence of danger to the community in the future, the BPT commissioners revulsion towards the crime itself, or some other unchanged circumstance, constitutes the alpha and omega of the decision. Nobody elected the BPT commissioners as sentencing judges. Rather, in some realistic way, the facts of the unchanged circumstance must indicate a present danger to the community if released, and this can only be assessed not in a vacuum, after four or five eligibility hearings, but counterpoised against the backdrop of prison events. (Bair v. Folsom State Prison, 2005 WL 2219220, \*12 n.3 (E.D.Cal. 2005), report and recommendation adopted by, 2005 WL 3081634 (E.D.Cal. 2005).)

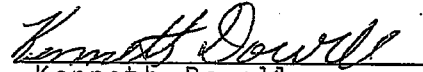
A review of all of petitioner's parole suitability hearings will reveal each board commissioner used the same factors to deny parole; and failed to realize that the commitment offense will never change. Does this constitute that the jury's findings of second degree murder, and the possibility of parole were a sham? What is there about the ~~Penal Code pursuant to "Double Jeopardy"~~ that the Board doesn't understand when continuing to retry petitioner's case over

and over, from his first parole consideration hearing in 1992 to the present?

The matrix for a second degree murder such as petitioner's, requires 16, 17 or 18 years of incarceration. Taking into account "good time credits," petitioner has now been incarcerated equivalent to 33 years. The question must be asked, is petitioner sentenced to life in prison without the possibility of parole?

It is, therefore, respectfully requested that this Honorable Court find that there is no evidence to support "an unreasonable risk to society," and order petitioner's immediate release.

Dated: April 16, 2007

  
Kenneth Dowell  
Litigant Pro-se

EXHIBITS

---

EXHIBIT A

---



COUNTY OF LOS ANGELES  
PROBATION OFFICER'S REPORT10/18  
URT'S COPY (ORIGINAL)

REPORT SEQUENCE NO. 1

DEFENDANT'S NAME(S) KENNETH RAY DOWELL			
ADDRESS TRANSIENT			
BIRTHDATE 10-6-46	AGE 37	SEX M	RACE CAUC.
CITIZENSHIP STATUS U.S.		DRIVER'S LICENSE / EXP. DATE S02299927/	
PROBATION NO. X-831389	CI# NO. 2771712	BOOKING NO. 6555492	
DAYS IN JAIL THIS CASE <input type="checkbox"/> ESTIMATED <input checked="" type="checkbox"/> VERIFIED 237		CUSTODY STATUS/RELEASE DATE JAIL	

COURT DEPT. SE-F	JUDGE MC GINLEY	COURT CASE NO. A454394
HEARING DATE 11-15-83	DEFENSE ATTY. URBAN	PROSECUTOR FRIEDENBERG
DPO VARTANIAN	AREA OFFICE RIO HONDO	PHONE NO. 692-7011
TYPE REPORT <input checked="" type="checkbox"/> Probation and sentence <input type="checkbox"/> Pre-Conviction (131.3 CCP) <input type="checkbox"/> Post sentence <input type="checkbox"/> Diversion (Specify) _____		

## PRESENT OFFENSE: LEGAL HISTORY

CHARGED with the crimes of (INCLUDE PRIORS, ENHANCEMENTS OR SPECIAL CIRCUMSTANCES)

CT. 1, 187 PC (MURDER), USE ALLEGATION 1203.06(A)(1) PC AND 12022.5 PC  
CT. 2, 207 PC (KIDNAPPING)**FILED**

DEC 21 1983

JOHN J. CORCORAN, County Clerk  
By [Signature]  
Deputy

CONVICTED of the crimes of (INCLUDE PRIORS, ENHANCEMENTS OR SPECIAL CIRCUMSTANCES)

CT. 1, 187 PC (MURDER), 2ND DEGREE PLUS USE ALLEGATION 1203.06(A)(1) PC AND 12022.5 PC.

DATE OF OFFENSE 3-24-83	TIME UNKNOWN	CONVICTED BY JURY	DATE OF CONVICTION/RECEIVED 10-13-83
COUNT(S) CONTINUED TO P & S FOR DISPOSITION NONE-CT. 2, FOUND NOT GUILTY			
PROPOSED PLEA AGREEMENT 5 YRS. TO LIFE PLUS 2 YRS. CONSECUTIVE FOR USE.			SOURCES OF INFORMATION D.A. FILE, DEFENDANT

DEFENDANT: ☐ ON PROBATION ☐ ON PAROLE-REMAINING TIME \_\_\_\_\_ (SEE PRIOR RECORD SECTION)  
☒ PENDING PROBATION VIOLATION ☐ PENDING NEW CASE HOLDS/WARRANTS: ☒ YES ☐ NO

## RECOMMENDATION:

☐ PROBATION ☒ DENIAL ☐ DIAGNOSTIC STUDY ☐ CYA ☐ OTHER \_\_\_\_\_  
☐ COUNTY JAIL ☐ 707.2 WIC  
☒ STATE PRISON ☐ 1203.03 PC

C.I.M. & P.C.E.N.I.R.A.  
DEC 30 1983

PRESENT OFFENSE:  
(CONTINUED)SOURCES OF INFORMATION  
D.A. FILE

CO-DEFENDANT(S)		CASE NO.	DISPOSITION	
NONE		N/A	N/A	

BOOKED AS		OFFENSE	LOCATION	ARRESTING AGENCY
DOWELL, KENNETH RAY		187 PC (MURDER) 207 PC (KIDNAPPING)	IMPERIAL HWY., NORWALK	NORWALK SO HOMICIDE
ARREST DATE	TIME			
3-24-82	1:35 A.M.			

## ELEMENTS AND RELEVANT CIRCUMSTANCES OF THE OFFENSE:

AT ABOUT 12:30 IN THE MORNING ON MARCH 24, 1982, THE DEFENDANT ENTERED THE RESIDENCE OF VICTIM PAULINE DOWELL, EX-COMMON-LAW WIFE, FORCED HER TO DRESS AND STATED THAT HE WAS GOING TO KILL HER AND HER BOYFRIEND, VICTIM JAMES WINNET. DEFENDANT THEN FORCED HER INTO HIS RED PICKUP AND THEY DROVE LOOKING FOR VICTIM WINNET. AT THE TIME, VICTIM DOWELL DID NOT KNOW THAT THEY WERE BEING FOLLOWED, BY VICTIM WINNET. THE DEFENDANT STOPPED THE PICKUP TRUCK AND RETRIEVED A HANDGUN FROM BENEATH THE SEAT AND EXITED THE TRUCK. SEVERAL SHOTS WERE FIRED AND THE DEFENDANT TOLD VICTIM WINNET THAT HE WAS GOING TO KILL HIM. AT ABOUT 1:45 A.M. VICTIM WINNET WAS DETERMINED TO BE DEAD.

AFTER DEFENDANT SHOT VICTIM WINNET, VICTIM DOWELL RAN FROM THE SCENE TO CALL FOR HELP. ~~THE DEFENDANT SHOULDED FOR HER TO STOP AND WHEN SHE DID NOT COMPLY, HE FIRED ONE SHOT AT HER.~~

-2- (DOWELL)

*See Court Transcript*

VICTIM:

SOURCES OF INFORMATION (Sheet 1 of 1)

D.A. FILE

NAME JAMES MICHAEL WINNET	COUNT(S) CT. 1
INJURY: PROPERTY LOSS (TYPE / COST / ETC.) DECEASED	
INSURANCE COVERAGE UNKNOWN.	
<input checked="" type="checkbox"/> VICTIM LIST CONTINUES NEXT PAGE	

VICTIM STATEMENT:

VICTIM WINNET DIED AT THE SCENE.

RESTITUTION: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		ESTIMATED LOSS TO ALL VICTIMS UNKNOWN
RESTITUTION ALREADY MADE NO	APPLIED FOR VICTIM INDEMNITY FUND UNK. <input type="checkbox"/> YES <input type="checkbox"/> NO	VICTIM(S) NOTIFIED OF P&S HEARING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DOES DEFENDANT HAVE INSURANCE TO COVER RESTITUTION: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		INSURANCE COMPANY NAME, ADDRESS/TELEPHONE NO. N/A

-3- (DOWELL)

## ADDITIONAL VICTIMS:

SOURCES OF INFORMATION (1: age)

D.A. FILE

NAME	COUNT(S)
PAULINE IRENE DOWELL	CT. 2
INJURY: PROPERTY LOSS (TYPE / COST / ETC.)	
NONE	
INSURANCE COVERAGE	
NONE	
_____ VICTIM LIST CONTINUES NEXT PAGE	

## VICTIM STATEMENT:

VICTIM STATES THAT THE DEFENDANT WAS HER COMMON-LAW HUSBAND FOR TEN YEARS. SHE HAS MIXED FEELINGS ABOUT WHAT HAPPENED. SHE FEELS A LOT OF GUILT AND FEELS THAT THE OFFENSE WAS PARTLY HER FAULT. PREVIOUSLY, THE DEFENDANT WARNED (CONTINUE PAGE 5)

NAME	COUNT(S)
INJURY: PROPERTY LOSS (TYPE / COST / ETC.)	
INSURANCE COVERAGE	
_____ VICTIM LIST CONTINUES NEXT PAGE	

## VICTIM STATEMENT:

-4- (DOWELL)

1 VICTIM: (CONTINUED)

2 HER TO STAY AWAY FROM THE VICTIM, BUT SHE DID NOT. SHE IS GLAD  
3 THAT THE KIDNAPPING CHARGES WERE DROPPED BECAUSE ~~SHE NEVER FELT~~  
4 ~~THAT SHE WAS KIDNAPPED.~~ SHE INDICATES THAT SHE HAS TO LIVE WITH  
5 HER GUILT FOR THE REST OF HER LIFE. SHE FEELS THAT THE DEFENDANT  
6 HAS LEARNED HIS LESSON. SHE WANTS HIM TO GET OFF AS EASY AS  
7 POSSIBLE.

8 -5- (DOWELL)

PRIOR RECORD:

SOURCES OF INFORMATION (THIS PAGE)

CII DATED 10-24-87 PROB. RECORDS,  
DEFENDANT.

AKA'S:

JUVENILE HISTORY:

NONE.

ADULT HISTORY:

1-6-70 LYNWOOD PD - 11940 H&S (POSS. OF NARCOTICS), 12020 PC (CARRYING CONCEALED WEAPON) - ON CHARGE OF 417 PC (EXHIBITING FIREARM), 1 YR. PROB., \$100 FINE.

9-7-70 HUNTINGTON PARK PD - WARRANTS - ON 10-20-70, 24252 VC (LIGHTING EQUIPMENT), \$10 FINE SUSPENDED. 12951 VC (POSS. OF LICENSE), DISM.

9-26-70 LONG BEACH PD - TRAFFIC WARRANTS - ON 10-1-70, 40508 VC (FAILURE TO APPEAR), \$20 OR 2 DAYS. 12951 VC (POSS. OF LICENSE), \$15 OR 1 DAY. 4454(A) VC (REG. CARD), DISM.

3-6-74 ORANGE COUNTY PROB. - NON-SUPPORT - 3 YRS. PROB.

3-11-77 LONG BEACH PD - 23102(A) VC (DRUNK DRIVING) - ON 3-11-77, 8 DAYS, \$315.50 FINE.

9-11-78 SANTA ANA SO - CENTRAL ORANGE COUNTY WARRANT NO. 78CNO0792, 270 PC (NON-SUPPORT) - ON 12-18-78, DISM. FURTHERANCE OF JUSTICE.

2-7-80 LASO - 2661 PC (PANDERING) - THIS REFERS TO NORWALK SUPERIOR COURT CASE NO. A448375. ON 5-15-80, 3 YRS. PROB., \$350 FINE. ON 7-29-82, PROB. REVOKED. VIOL. OF PROB. TO TRAIL P&S HEARING ON CASE NO. A454394.

3-24-82 LASO - 187(A) PC (MURDER)

(THIS REFERS TO THE PRESENT OFFENSE.)

-6- (DOWELL)

## PERSONAL HISTORY:

SOURCES OF INFORMATION (thru 1981)

DEFENDANT

RESIDENCE	TYPE RESIDENCE (LAST) HOUSE	LENGTH OF OCCUPANCY 3 YRS.	MORTGAGE/RENT. PAYMENT UNKNOWN	RESIDES WITH/RELATIONSHIP SELF
RESIDENTIAL STABILITY LAST FIVE YEARS GOOD		CAME TO STATE / FROM 1970/OREGON		CAME TO COUNTY / FROM 1970/OREGON

Additional information

## FORMAL EDUCATION:

COMPLETED THE 11TH GRADE AT EAGLE POINT HIGH SCHOOL IN THE  
STATE OF OREGON; HAS TRAINING AS A MAINTENANCE MECHANIC.

MARRIAGE / PARENTHOOD	MARITAL STATUS DIVORCED	NAME OF SPOUSE / COHABITANT (LAST) AKA: POLLY RAMIRES, PAULINE DOWELL
LENGTH OF UNION 9 YRS.	NO. OF CHILDREN THIS UNION 2	SUPPORTED BY MOTHER
NO. PRIOR MARRIAGES / COHABITATIONS 1	NO. OF CHILDREN THESE UNIONS 2	SUPPORTED BY MOTHER

Additional information

DEFENDANT STARTED LIVING WITH VICTIM POLLY RAMIRES, AKA  
PAULINE DOWELL IN 1971. THEY SEPARATED IN 1980 BECAUSE THEY COULD NOT  
GET ALONG. SHE IS CURRENTLY EMPLOYED AS A BOOKKEEPER. TWO CHILDREN,  
CURRENT AGES NINE AND THREE WERE BORN TO THIS RELATIONSHIP.

IN 1967, DEFENDANT MARRIED THE FORMER NEVA MC KINLEY.  
THEY DIVORCED IN 1972. SHE IS EMPLOYED AS A BANK MANAGER. TWO CHILDREN  
CURRENT AGES 17 AND 15 WERE BORN TO THIS MARRIAGE.

-7- (DOWELL)

PERSONAL HISTORY:  
(CONTINUED)

SOURCES OF INFORMATION

age)

DEFENDANT

## SUBSTANCE ABUSE:

☒ No record, indication, or admission of alcohol or controlled substance abuse.☐ Occasional social or experimental use of \_\_\_\_\_ acknowledged.☐ See below: Indication / admission of significant substance abuse problem.Referred to Narcotic Evaluator ☐ Yes ☒ No☐ Narcotic Evaluators report attached

Additional information

## PHYSICAL / MENTAL / EMOTIONAL HEALTH:

☒ No indication or claim of significant physical/mental/emotional health problem.☐ See below: Indication / claim of significant physical/mental/emotional health problem.

Additional information

-8- (DOWELL)



PERSONAL HISTORY:  
(CONTINUED)

SOURCES OF INFORMATION (thru)

DEFENDANT.

EMPLOYMENT STATUS	<input type="checkbox"/> EMPLOYED	REFERRED TO WORK FURLOUGH	EMPLOYER AWARE OF PRESENT OFFENSE	
	<input checked="" type="checkbox"/> UNEMPLOYED	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
PRESENT/LAST EMPLOYER / ADDRESS / PHONE		OCCUPATION	TIME ON JOB	GROSS MONTHLY WAGE
KEN'S MACHINE AND WELDING SANTA FE SPRINGS, CA.		MANAGER	2½ YRS.	ABOUT \$1600
		EMPLOYMENT STABILITY LAST 5 YEARS	TYPES OF PREVIOUS EMPLOYMENT	
		GOOD	MOTORCYCLE MECHANIC, ANIMAL FEEDER, MAINTENANCE WORK.	

Additional information

DEFENDANT WAS EMPLOYED AT THE TIME OF HIS ARREST.

FINANCIAL STATUS	INCOME STABILITY	NET MONTHLY INCOME	
	POOR	NONE	
PRIMARY INCOME SOURCE	SECONDARY INCOME SOURCE(S)	EST. TOTAL ASSETS	EST. TOTAL LIABILITIES
NONE	NONE	NONE	NONE
MAJOR ASSETS / ESTIMATED VALUE			
NONE			
MAJOR LIABILITIES / ESTIMATED AMOUNT			
NONE			

Additional information

-9- (DOWELL)

DEFENDANT'S STATEMENT:

DEFENDANT STATES THAT HE WENT TO TALK TO HIS COMMON-LAW WIFE, VICTIM DOWELL, AT HER HOME. WHILE THERE, SHE TOLD THE DEFENDANT THAT HER BOYFRIEND, VICTIM WINNET HAD TRADED HER CAR AT PARKMAN'S BAIL BONDSMAN FOR "SOMETHING". THEY DROVE TO THE BONDING COMPANY SO DEFENDANT COULD CHECK ON THE CAR. HOWEVER, THERE WAS NO ONE THERE SO THEY STARTED DRIVING BACK. HE SAW HIS EX-COMMON-LAW WIFE'S BOYFRIEND, VICTIM WINNET SO HE PARKED HIS TRUCK AND THE VICTIM PULLED UP BEHIND HIM. VICTIM WINNET STARTED SHOOTING AT HIM FIRST. DEFENDANT SAID THAT HE SHOT BACK. HE INDICATES, "I ALWAYS CARRY A GUN". HE SHOT THE VICTIM FOUR OR FIVE TIMES IN STOMACH AND VICTIM DOWELL TOOK OFF FROM THE SCENE RUNNING. ACCORDING TO THE DEFENDANT, THE POLICE CLAIMED THAT HE KIDNAPPED HIS COMMON-LAW WIFE BUT DEFENDANT SAYS THAT THIS IS NOT TRUE AND THAT SHE WENT WITH HIM ON HER OWN.

AFTER THE SHOOTING, DEFENDANT DID NOT RUN FROM THE SCENE AND SAYS, "I WAITED FOR THE POLICE. I NEVER HAD ANY INTENTION OF KILLING ANYONE. I'M SORRY IT HAPPENED."

INTERESTED PARTIES:

EFFORTS TO REACH THE INVESTIGATING OFFICER, DETECTIVE GRIGGS, LOS ANGELES SHERIFF'S DEPARTMENT HOMICIDE, 974-4341 HAVE MET WITH NEGATIVE RESULTS. HE WAS NOT AT THE OFFICE AND A TELEPHONE MESSAGE WAS LEFT FOR HIM TO CONTACT THE PROBATION OFFICER. AS OF

-10- (DOWELL)

1 DICTATION, HE HAS NOT RETURNED THE CALL.

2 DEFENDANT WAS UNABLE TO SUPPLY THE PROBATION OFFICER  
3 WITH ANY CHARACTER REFERENCES WITH TELEPHONE NUMBERS.

4 EVALUATION:

5 ALTHOUGH THIS DEFENDANT DOES HAVE A CRIMINAL RECORD,  
6 HIS BEHAVIOR IN THE PRESENT OFFENSE APPEARS TO BE OUT OF CHARACTER  
7 FOR HIM. HIS PAST RECORD DOES NOT INCLUDE ANY ACTS OF VIOLENCE.

8 IT SEEMS THAT THE DEFENDANT WAS STILL EMOTIONALLY  
9 INVOLVED WITH HIS COMMON-LAW WIFE AND THAT HIS VIOLENT BEHAVIOR  
0 RESULTED FROM JEALOUSY. HE COMMITTED A VERY CRUEL AND CALLOUS  
1 ACT. JUSTICE WOULD BEST BE SERVED BY HIS COMMITMENT TO STATE  
2 PRISON FOR THE MAXIMUM TIME POSSIBLE.

3 SENTENCING CONSIDERATIONS:

4 CIRCUMSTANCES IN AGGRAVATION:

- 5 1. THE PLANNING WITH WHICH THE CRIME WAS CARRIED  
6 OUT INDICATED PREMEDITATION.  
7 2. THE DEFENDANT'S PRIOR CONVICTIONS AS AN ADULT  
8 ARE OF INCREASING SERIOUSNESS.  
9 3. THE DEFENDANT WAS ON PROBATION WHEN HE COMMITTED  
0 THE CRIME.

1 CIRCUMSTANCES IN MITIGATION:

2 THERE APPEAR TO BE NO MITIGATING FACTORS.

3 IF DEFENDANT IS SENTENCED TO STATE PRISON, THE  
4 HIGH-BASE TERM IS RECOMMENDED.

5 -11- (DOWELL)

1 RECOMMENDATION:

2 IT IS RECOMMENDED THAT PROBATION BE DENIED AND THE  
3 DEFENDANT BE SENTENCED TO STATE PRISON WITH PREIMPRISONMENT CREDIT  
4 OF 237 DAYS.

5 RESPECTFULLY SUBMITTED,

6 KENNETH E. KIRKPATRICK,  
7 PROBATION OFFICER

8 BY

*Charlene A. Vartanian*

9 CHARLENE A. VARTANIAN, DEPUTY  
10 RIO HONDO AREA OFFICE  
692-7011, X285

11 READ AND APPROVED:

I HAVE READ AND CONSIDERED  
THE FOREGOING REPORT OF THE  
PROBATION OFFICER.

12 *Richard L. Matson*

13 RICHARD L. MATSON, SDPO

14 (SUBMITTED 11-9-83)

15 (RECEIVED 11-9-83)

16 (TYPED 11-10-83)

CAV:RC (7)

JUDGE OF THE SUPERIOR COURT

17  
18 IF PROBATION IS GRANTED, IT IS RECOMMENDED THAT THE  
9 COURT DETERMINES DEFENDANT'S ABILITY TO PAY COST OF PROBATION SERVICES  
10 PURSUANT TO SECTION 1203.1B PENAL CODE; AND, IF CONFINEMENT IN COUNTY  
11 JAIL IS ORDERED AS A CONDITION OF PROBATION, THE COURT DETERMINES  
12 DEFENDANT'S ABILITY TO PAY COST OF CONFINEMENT CHARGES PURSUANT TO  
13 SECTION 1203.1C PENAL CODE.

-12- (DOWELL)

DEC 30 49:17  
IN R & R CENTRAL

EXHIBIT B

---

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

**INMATE  
COPY**

In the matter of the Life )  
Term Parole Consideration )  
Hearing of: )

CDC Number C-78669

KENNETH DOWELL )  
\_\_\_\_\_ )

SAN QUENTIN STATE PRISON

SAN QUENTIN, CALIFORNIA

NOVEMBER 30, 2006

10:51 A.M.

PANEL PRESENT:

Ms. Janice Eng, Presiding Commissioner  
Mr. Doug Filangeri, Deputy Commissioner  
J. Vieira, Board of Parole Hearings, Observer

OTHERS PRESENT:

Mr. Kenneth Dowell, Inmate  
Ms. Anne Hawkins, Attorney for Inmate  
Mr. James Jacobs, Deputy District Attorney  
(via videoconference)  
Correctional Officer(s), Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

~~BERENICE BILLINGTON~~

NORTHERN CALIFORNIA COURT REPORTERS

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--oOo--

1

P R O C E E D I N G S

PRESIDING COMMISSIONER ENG: -- Parole

1  
2  
3 Consideration Hearing for Kenneth Dowell,  
4 D-O-W-E-L-L, CDC number C-78669. Today's date is  
5 November 30<sup>th</sup>, 2006, and the time is 10:51 a.m. We  
6 are located at San Quentin State Prison. The  
7 inmate was received on December 30<sup>th</sup>, 1983, from  
8 Los Angeles County. His life term began on  
9 December 30<sup>th</sup>, 1983, with a minimum eligible parole  
10 date of July 6<sup>th</sup>, 1992. The controlling offense  
11 for which the inmate has been committed is Murder  
12 Two, case number A454394, count one, Penal Code  
13 187 -- let's see, with a Shotgun, and then there's  
14 another non-controlling offense, count one, Penal  
15 Code 266.1, Pandering, and that was on February  
16 7<sup>th</sup>, 1980. The inmate received a total term of 15  
17 years to life. This hearing is being tape  
18 recorded, and for the purpose of voice  
19 identification each of us will be required to  
20 state our first and last names, spelling out our  
21 last name, and sir, when it comes to your turn,  
22 once you've spelled out your last name, please  
23 also provide us with your CDC number. So I will  
24 begin and we'll move to my right, and don't  
25 forget, we have to -- we've got the Deputy DA on  
26 video. My name is Janice Eng, E-N-G,  
27 Commissioner.



2

1           DEPUTY COMMISSIONER FILANGERI: Doug  
2     Filangeri, F-I-L-A-N-G-E-R-I, Deputy Commissioner.

3           DEPUTY DISTRICT ATTORNEY JACOBS: James  
4     Jacobs, J-A-C-O-B-S, Deputy District Attorney, Los  
5     Angeles County.

6           PRESIDING COMMISSIONER ENG: Mr. Dowell?

7           INMATE DOWELL: Dowell, D-O-W-E-L-L, C  
8     number, C-78669.

9           PRESIDING COMMISSIONER ENG: First name?

10          INMATE DOWELL: Kenneth.

11          PRESIDING COMMISSIONER ENG: Okay. Thank  
12     you.

13          ATTORNEY HAWKINS: Anne Hawkins,  
14     H-A-W-K-I-N-S, on behalf of Mr. Dowell.

15          PRESIDING COMMISSIONER ENG: Okay. Go  
16     ahead.

17          MS. VIEIRA: J. Vieira, V-I-E-I-R-A, Board  
18     of Parole Hearings, observing.

19          PRESIDING COMMISSIONER ENG: Okay. Thank  
20     you. For the record, we have two correctional  
21     officers present for security reasons and they  
22     will not be participating in the hearing. Before  
23     we begin, sir, I'd like you to read aloud the ADA  
24     Rights and Self-Identification Statement in front  
~~25     of you. You can begin at any time.~~

26          INMATE DOWELL: Okay.

1           "The American with Disabilities Act,  
2           ADA, is a law to help people with  
3           disabilities. Disabilities are  
4           problems that make it harder for  
5           some people to see, hear, breathe,  
6           talk, walk, learn, think, work, or  
7           take care of themselves than it is  
8           for others. Nobody can be kept out  
9           of public places or activities  
10          because of a disability. If you  
11          have a disability, you have the  
12          right to help -- to ask for help to  
13          get ready for your BPT Board  
14          Hearing, get to the hearing, talk,  
15          read forms and papers and understand  
16          the hearing process. BPT will look  
17          at what you ask for to make sure  
18          that you have a disability that is  
19          covered by the ADA and that you have  
20          asked for the right kind of help.  
21          If you do not get help or if you  
22          don't think you got the kind of help  
23          you need, ask for the -- for a BPT  
24          1074 Grievance Form. You can also  
25          get help to fill it out."  
26          PRESIDING COMMISSIONER ENG: Okay. Thank  
27          you. The record reflects that you did sign the

4

1 BPT Form 1073 on July 26<sup>th</sup>, 2006, and this form is  
2 a Reasonable Accommodation Notice and Request in  
3 accordance with the provisions of the Americans  
4 with Disabilities Act, and it indicates that you  
5 have checked off that you do not have any  
6 disabilities under the ADA. Is that true, sir?

7 INMATE DOWELL: I'm dyslexic.

8 PRESIDING COMMISSIONER ENG: You're  
9 dyslexic.

10 INMATE DOWELL: Yeah.

11 PRESIDING COMMISSIONER ENG: Okay.

12 However--

13 INMATE DOWELL: But --

14 PRESIDING COMMISSIONER ENG: -- you did  
15 check off that according to the ADA, though, that  
16 you don't --

17 INMATE DOWELL: Yeah.

18 PRESIDING COMMISSIONER ENG: -- have any  
19 problems. So I just wanted to be sure that the  
20 information is current and correct.

21 INMATE DOWELL: I don't know. There's no  
22 disabilities that enhanders [sic] from  
23 participating in this hearing.

24 PRESIDING COMMISSIONER ENG: Right. And  
25 that's the important part. Okay. So I still have

26 to go through some basic questions regarding ADA--

27 INMATE DOWELL: Yeah.

5

1           PRESIDING COMMISSIONER ENG:   -- okay?

2           INMATE DOWELL:   Right.

3           PRESIDING COMMISSIONER ENG:   So do you have  
4 any problems walking up or down stairs or for  
5 distances of 100 yards or more?

6           INMATE DOWELL:   No.

7           PRESIDING COMMISSIONER ENG:   Okay.   And I  
8 see that you do have glasses.   And are those for  
9 reading and distance?

10          INMATE DOWELL:   Yes.

11          PRESIDING COMMISSIONER ENG:   And are those  
12 sufficient for you to be able to read any  
13 documents if necessary during the hearing?

14          INMATE DOWELL:   Yes.

15          PRESIDING COMMISSIONER ENG:   Okay.   And do  
16 you have any hearing impairments?

17          INMATE DOWELL:   No.

18          PRESIDING COMMISSIONER ENG:   Okay.   Have you  
19 ever been included in the Triple CMS or the EOP  
20 programs?

21          INMATE DOWELL:   No, I have not.

22          PRESIDING COMMISSIONER ENG:   And you know  
23 what those are?

24          INMATE DOWELL:   Yes, I do.

---

25          PRESIDING COMMISSIONER ENG:   So do you  
26 suffer from any disability that would prevent you  
27 from participating in today's hearing?

6

1           INMATE DOWELL: Not that I'm aware of.

2           PRESIDING COMMISSIONER ENG: Okay. Good.

3           Counselor, are there any ADA issues that you  
4           believe need further discussion regarding your  
5           client's ability to go on with the hearing?

6           ATTORNEY HAWKINS: No.

7           PRESIDING COMMISSIONER ENG: Okay. Okay.

8           So this hearing is being conducted pursuant to the  
9           Penal Code and the rules and regulations of the  
10          Board of Parole Hearings governing parole  
11          consideration hearings for life inmates. The  
12          purpose of today's hearing is to once again  
13          consider your suitability for parole. In doing so  
14          we'll consider the number and nature of the crimes  
15          for which you were committed, your prior criminal  
16          and social history, your behavior and programming  
17          since your commitment, and your plans if released.  
18          We've had the opportunity to review your Central  
19          File, and you'll also be given an opportunity to  
20          correct or clarify the record. We will consider  
21          your progress since your commitment, your  
22          counselor's reports, and your mental health  
23          evaluation. We'll focus on your progress and any  
24          new reports since your last hearing, so any change  

---

25          in the parole plans should be brought to our  
26          attention. We'll reach a decision today and  
27          inform you whether or not we find you suitable for

1 parole and the reasons for our decision. So if  
2 you are found suitable for parole, the length of  
3 your confinement will be fully explained to you at  
4 that time. Before we recess for deliberation --  
5 deliberations, the District Attorney's  
6 representative, your attorney and you yourself  
7 will have an opportunity to provide us with a  
8 final statement. Just be sure that in your final  
9 statement that you focus on your suitability for  
10 parole. We'll then recess, clear the room and  
11 deliberate. And once we've completed our  
12 deliberations, we'll resume the hearing and  
13 announce our decision. California Code of  
14 Regulations states that regardless of time served,  
15 a life inmate shall be found unsuitable for and  
16 denied parole if in the judgment of the panel the  
17 inmate would pose an unreasonable risk of danger  
18 to society if released from prison. So you have  
19 certain rights. Those rights include the right to  
20 a timely notice of this hearing, the right to  
21 review your Central File, and the right to present  
22 relevant documents. So Counselor, has your --  
23 have your client's rights been met?

24 **ATTORNEY HAWKINS:** Yes.

25 **PRESIDING COMMISSIONER ENG:** Okay. So you

---

26 have an additional right to be heard by an  
27 impartial panel. You've been introduced to the

8

1 panel. Do you have any objections to this panel?

2 INMATE DOWELL: No, I have no objection to  
3 it.

4 PRESIDING COMMISSIONER ENG: Counselor, do  
5 you have any objections to the panel?

6 ATTORNEY HAWKINS: No.

7 PRESIDING COMMISSIONER ENG: So you will  
8 receive a copy of our written tentative decision  
9 today. That decision becomes final within 120  
10 days. A copy of the decision and copy of the  
11 transcript will be sent to you. And on May 1<sup>st</sup>,  
12 2004, regulations regarding your right to appeal a  
13 decision made at this hearing were repealed. So  
14 the process now is that you must go through the  
15 courts. So if you have any questions about that  
16 process and the procedure, you can talk it over  
17 with your legal counsel or you can also review the  
18 policy at your prison law library. Sir, you're  
19 not required to admit to or discuss your offense,  
20 however, the panel does accept as true the  
21 findings of the court. So you do understand what  
22 that means?

23 INMATE DOWELL: Yes, I understand.

24 PRESIDING COMMISSIONER ENG: So  
25 Commissioner, Filangeri, is there any confidential  
26 material that will be used today?

27 DEPUTY COMMISSIONER FILANGERI: There is no

1 confidential material in the file.

2 PRESIDING COMMISSIONER ENG: Okay. We've  
3 already reviewed the Hearing Checklist with the  
4 Deputy DA in Los Angeles, and your attorney has  
5 also checked this off, and we do this to make sure  
6 that we all have the same set of documents for the  
7 hearing, and this is labeled "Exhibit 1."  
8 Counselor, are there any additional documents to  
9 be submitted to the panel this morning?

10 ATTORNEY HAWKINS: Yes. There are a number  
11 of letters of recommendation received by Mr.  
12 Dowell from family members, a community religious  
13 leader, as well as family friends.

14 PRESIDING COMMISSIONER ENG: Okay. Thank  
15 you. Do you have any preliminary objections?

16 ATTORNEY HAWKINS: No.

17 PRESIDING COMMISSIONER ENG: Okay. And will  
18 your client be speaking with the panel this  
19 morning?

20 ATTORNEY HAWKINS: Yes. Mr. Dowell is  
21 prepared to answer any questions the panel might  
22 have.

23 PRESIDING COMMISSIONER ENG: Okay. Sir,  
24 I'll have to swear you in. Please raise your  
25 right hand.

26 INMATE DOWELL: (inaudible).

27 PRESIDING COMMISSIONER ENG: Do you solemnly



10

1 swear or affirm that the testimony that you give  
2 at this hearing will be truth, the whole truth,  
3 and nothing but the truth?

4 INMATE DOWELL: Yes.

5 PRESIDING COMMISSIONER ENG: Okay. Thank  
6 you. I'm going to read into the record the  
7 Statement of Facts, and I'm taking that from the  
8 Probation Officer's Report, Page 2.

9 "At about 12:30 in the morning on  
10 March 24, 1982, the defendant  
11 entered the residence of victim  
12 Pauline Dowell, D-O-W-E-L-L,  
13 ex-common-law wife, forced her to  
14 dress, and stated that he was going  
15 to kill her and her boyfriend,  
16 victim James Winnet, W-I-N-N-E-T.  
17 Defendant then forced her into his  
18 red pickup and they drove looking  
19 for victim Winnet. At the time,  
20 victim Dowell did not know that  
21 there -- they were being followed by  
22 victim Winnet. The defendant  
23 stopped the pickup truck and  
24 retrieved a handgun from beneath the  
25 seat and exited the truck. Several  
26 shots were fired, and the defendant

11

1 told victim Winnet that he was going  
2 to kill him. At about 1:40 a.m.,  
3 victim Winnet was determined to be  
4 dead. After defendant shot victim  
5 Winnet, victim Dowell ran from the  
6 scene to call for help. The  
7 defendant shouted for her to stop,  
8 and when she did not comply, he  
9 fired one shot at her."  
10 Sir, is that an accurate description of what -- I  
11 know it's a brief description, but is that an  
12 accurate description of what happened on that  
13 night?

14 INMATE DOWELL: Yeah, that's the record of  
15 the court. I dispute one item in there. I never  
16 shot at Pauline. But other than that, it's fairly  
17 accurate, yes.

18 PRESIDING COMMISSIONER ENG: Okay. Because  
19 I thought that she had stated that she thought  
20 that you had fired at her.

21 INMATE DOWELL: I think in the court record  
22 it states where she -- doesn't it? That it says  
23 that I did not fire at her, but I could be  
24 mistaken there, but --

-----  
25 PRESIDING COMMISSIONER ENG: You were used  
26 to dealing with weapons, correct?

27 INMATE DOWELL: Yes.

12

1           PRESIDING COMMISSIONER ENG: Had you grown  
2 up with a lot of guns?

3           INMATE DOWELL: Yes.

4           PRESIDING COMMISSIONER ENG: So I'm assuming  
5 that by having all those guns, you were used to  
6 shooting them also?

7           INMATE DOWELL: Yes.

8           PRESIDING COMMISSIONER ENG: Okay. You were  
9 pretty angry at Mr. Winnet.

10          INMATE DOWELL: At that time I was, yes.

11          PRESIDING COMMISSIONER ENG: You were angry  
12 because he was going to -- he intended to marry  
13 Miss Dowell?

14          INMATE DOWELL: Yeah. It was a problem of  
15 jealousy and anger, for that reason right there,  
16 but he was becoming between my children and of  
17 course what I thought was my wife, you know, and  
18 which those feelings I know now are misgiven, but  
19 at that time that's the way I felt, and but I know  
20 that those feelings there could never -- you know,  
21 were entirely misguided.

22          PRESIDING COMMISSIONER ENG: And you were  
23 separated at the time, weren't you?

24          INMATE DOWELL: No.

~~25          PRESIDING COMMISSIONER ENG: You were still~~  
26 living together?

27          INMATE DOWELL: Well, we'd been -- my

13

1 clothes were still in the closets. We hadn't  
2 actually moved out apart from one another at the  
3 time.

4 PRESIDING COMMISSIONER ENG: But you -- were  
5 you aware that Miss Dowell intended to spit with  
6 you, or to separate with you?

7 INMATE DOWELL: Yeah, we had spoke about it  
8 earlier in the week, or week before that, I think  
9 it was, but, you know, you never -- those  
10 emotions, you never really -- it takes awhile to  
11 get over them and everything and that's how -- why  
12 I was still angry at the time, I think it was.

13 PRESIDING COMMISSIONER ENG: Were you  
14 abusive to Mrs. Dowell?

15 INMATE DOWELL: No.

16 PRESIDING COMMISSIONER ENG: Did you ever  
17 hit her in the past?

18 INMATE DOWELL: One time I did, but that was  
19 almost two years prior to that.

20 PRESIDING COMMISSIONER ENG: Had you hit  
21 women before in previous relationships?

22 INMATE DOWELL: Never.

23 PRESIDING COMMISSIONER ENG: What caused you  
24 to hit her that one time?

~~25 INMATE DOWELL: A very heated argument.~~

26 PRESIDING COMMISSIONER ENG: Do you remember  
27 what it was about?

14

1 INMATE DOWELL: Infidelity, I believe.

2 PRESIDING COMMISSIONER ENG: On whose part?

3 INMATE DOWELL: On her part.

4 PRESIDING COMMISSIONER ENG: Okay. Can you  
5 think back and remember what triggered -- do you  
6 understand what I mean by that? What triggered  
7 you to actually strike out at her?

8 INMATE DOWELL: Well, I --

9 PRESIDING COMMISSIONER ENG: What was the  
10 moment?

11 INMATE DOWELL: I think it's when she was  
12 yelling at me and actually struck me, I think, or  
13 at least pushed me anyway.

14 PRESIDING COMMISSIONER ENG: And what did  
15 you do?

16 INMATE DOWELL: I think that's when I pushed  
17 her back, and I just pushed her at that time.  
18 That's all I did, just pushed her.

19 PRESIDING COMMISSIONER ENG: Did you knock  
20 her down?

21 INMATE DOWELL: No.

22 PRESIDING COMMISSIONER ENG: So she didn't  
23 fall?

24 INMATE DOWELL: No.

25 ~~PRESIDING COMMISSIONER ENG: How'd you feel~~  
26 about doing that?

27 INMATE DOWELL: I felt really, really bad

15

1 about it, and for a long time I really talked to  
2 her several times about it and everything, because  
3 I know that that really makes women feel powerless  
4 and stuff.

5 PRESIDING COMMISSIONER ENG: Do you think  
6 that contributed to her wanting to split up with  
7 you?

8 INMATE DOWELL: It may have. But mostly the  
9 reason why we split up is because I never devoted  
10 enough time to our relationship, and that's the  
11 main reason that we --

12 PRESIDING COMMISSIONER ENG: What caused you  
13 to get to a point where you would actually shoot  
14 and kill Mr. Winnet? What caused you to get so  
15 angry that night?

16 INMATE DOWELL: Well, I think it's when -- I  
17 intended to talk to Pauline about the separation  
18 and everything, and then when I found out that Mr.  
19 Winnet had taken her car and traded it off to some  
20 impound lot or something, and I think that's what  
21 really put my emotions over the top, I think.

22 PRESIDING COMMISSIONER ENG: Why did you  
23 focus on him and not on her?

24 INMATE DOWELL: I love Pauline very much and  
25 we have two children together, and, you know, you  
26 can't -- you can never have looked the children in  
27 the eye again if you would harm their mother or

1 something in a serious fashion. You just would  
2 never be able to do that.

3 PRESIDING COMMISSIONER ENG: Did you  
4 typically drive around with a loaded weapon in  
5 your vehicle or on your person?

6 INMATE DOWELL: In the vehicle most of the  
7 time.

8 PRESIDING COMMISSIONER ENG: Why?

9 INMATE DOWELL: I was -- I grew up that way,  
10 and it just carried over from my childhood I  
11 guess.

12 PRESIDING COMMISSIONER ENG: Even though  
13 it's against the law?

14 INMATE DOWELL: Well, in the state I grew up  
15 in, it's not against the law as long as it's in  
16 plain sight.

17 PRESIDING COMMISSIONER ENG: I believe that  
18 you had a weapon hidden.

19 INMATE DOWELL: I had one behind the seat,  
20 but it was unloaded, and that's true, and the  
21 other one was laying on the floorboard.

22 PRESIDING COMMISSIONER ENG: But even then,  
23 I don't think in the County of Los Angeles --

24 INMATE DOWELL: It's -- it was illegal. I'm  
25 not trying to argue that.

---

26 PRESIDING COMMISSIONER ENG: Okay. Okay.  
27 Had you been drinking that night?

17

1 INMATE DOWELL: Earlier.

2 PRESIDING COMMISSIONER ENG: Did you ever do  
3 drugs?

4 INMATE DOWELL: No.

5 PRESIDING COMMISSIONER ENG: Strictly  
6 drinking?

7 INMATE DOWELL: Yeah.

8 PRESIDING COMMISSIONER ENG: Okay. You used  
9 to get drunk a lot?

10 INMATE DOWELL: Sometimes, yes.

11 PRESIDING COMMISSIONER ENG: Would you say  
12 that you had a drinking problem?

13 INMATE DOWELL: Yeah, occasionally. I  
14 mostly would go on binge drinking, you know.

15 PRESIDING COMMISSIONER ENG: If you have any  
16 recollection of those times that you went on binge  
17 drinking, would you have a tendency to get easily  
18 angered, do you recall? Or has anybody ever told  
19 you that?

20 INMATE DOWELL: No. Mostly when I would be  
21 binge drinking or something, it was a traffic  
22 problem or something that I would have, which is  
23 -- you know, the records support that. I --

24 PRESIDING COMMISSIONER ENG: Right.

25 INMATE DOWELL: I have two -- three DUIs,  
26 drunk driving, and that's the biggest problem.

27 PRESIDING COMMISSIONER ENG: Had anybody



18

1 ever told you, you know how the saying goes, that  
2 some people are ugly drunks?

3 INMATE DOWELL: Yeah.

4 PRESIDING COMMISSIONER ENG: Okay.

5 INMATE DOWELL: Yeah. No.

6 PRESIDING COMMISSIONER ENG: Where some  
7 people can turn very nasty --

8 INMATE DOWELL: Yeah.

9 PRESIDING COMMISSIONER ENG: -- when they've  
10 had a certain amount to drink, and other people --

11 INMATE DOWELL: Yeah.

12 PRESIDING COMMISSIONER ENG: -- sometimes  
13 get very passive and --

14 INMATE DOWELL: Right.

15 PRESIDING COMMISSIONER ENG: -- just sort of  
16 blend in with the woodwork.

17 INMATE DOWELL: Yeah.

18 PRESIDING COMMISSIONER ENG: So has anybody  
19 ever indicated that to you about yourself?

20 INMATE DOWELL: No, uh-uh, because I don't  
21 interact with people normally when I'm drinking.

22 PRESIDING COMMISSIONER ENG: Did it ever  
23 occur to you when you were drinking and driving  
24 that you could possibly kill somebody?

25 INMATE DOWELL: Well, at the time it never,  
26 but as years have went by, well, yeah, there's a  
27 very likelihood that that would've happened if I

19

1 were to continue doing that.

2 PRESIDING COMMISSIONER ENG: You said that  
3 you have two children.

4 INMATE DOWELL: Yeah.

5 PRESIDING COMMISSIONER ENG: And people and  
6 drive, you have to think in terms sometimes what  
7 would -- how would you feel if a drunk driver  
8 killed one of your children.

9 INMATE DOWELL: Yeah, I understand that.  
10 That's exactly what I'm talking about right there.

11 PRESIDING COMMISSIONER ENG: Okay. Let's  
12 take a look at your prior record. You did notate  
13 that you did have some problems with drunk  
14 driving. The record indicates that you  
15 (inaudible) tell that you had any juvenile record.  
16 Is that true?

17 INMATE DOWELL: That's true.

18 PRESIDING COMMISSIONER ENG: Okay. So you  
19 really started running into problems as an adult,  
20 dating back to I guess April 2<sup>nd</sup>, 1965. Do you  
21 recall that? I guess this was in Oregon.

22 INMATE DOWELL: Yeah.

23 PRESIDING COMMISSIONER ENG: You were  
24 arrested and convicted for public drunkenness.

---

25 INMATE DOWELL: Yeah.

26 PRESIDING COMMISSIONER ENG: Then five years  
27 later, on January 6, 1970, the Lynnwood Police

1 Department arrests, possession of narcotics, and  
2 possession of a concealed weapon. What were you  
3 doing with narcotics? I thought you told me that  
4 you didn't do drugs.

5 INMATE DOWELL: Those were prescription  
6 medication that the person that owned the coat I  
7 was wearing.

8 PRESIDING COMMISSIONER ENG: Okay.

9 INMATE DOWELL: They were in a pocket of the  
10 coat that --

11 PRESIDING COMMISSIONER ENG: What about the  
12 concealed weapon?

13 INMATE DOWELL: It was a hunting -- knife  
14 that I had on my belt.

15 PRESIDING COMMISSIONER ENG: Okay.

16 INMATE DOWELL: We just got back from a  
17 camping trip on the Kern River and --

18 PRESIDING COMMISSIONER ENG: How'd they end  
19 up picking you up?

20 INMATE DOWELL: The person -- not -- I  
21 wasn't involved, but one of the people in the  
22 party had a fight with somebody out in the middle  
23 of the street, and somebody called the cops, and  
24 we were unloading things there in the driveway and  
25 they showed up, and so they stopped everybody and  
26 searched them and everything and --

27 PRESIDING COMMISSIONER ENG: Were you the

1 only one out of the group that was arrested?

2 INMATE DOWELL: No, the other two people  
3 that were in the fight also, were arrested also.

4 PRESIDING COMMISSIONER ENG: Then in March  
5 of '74, three-year county probation for failure to  
6 pay support. What was that about?

7 INMATE DOWELL: My first wife, I missed two  
8 child support payments.

9 PRESIDING COMMISSIONER ENG: Okay. Then in  
10 '77 the Long Beach Police Department arrest for  
11 drunk driving. Found guilty of a misdemeanor and  
12 fined. And then three years later you received  
13 the pandering arrest, and you were sentenced to 36  
14 months of court probation. This is the -- this  
15 conviction was the one that was merged with the  
16 commitment offense --

17 INMATE DOWELL: Yeah.

18 PRESIDING COMMISSIONER ENG: -- that I had  
19 read into the record. And that pandering, tell me  
20 about that.

21 INMATE DOWELL: The renter didn't want to  
22 pay the rent, and I told her to -- I didn't care  
23 how she got it, because the banks tell me that I  
24 don't care how you get it, just give the money, so

-----25 I'm -- that was a very shameful way to do things,  
26 but sometimes you just -- you don't think about  
27 the repercussions and what you're actually doing

22

1 to people when you tell them things.

2 PRESIDING COMMISSIONER ENG: Would you have  
3 asked a man to --

4 INMATE DOWELL: No, I don't think so.

5 PRESIDING COMMISSIONER ENG: -- become a  
6 pimp?

7 INMATE DOWELL: I don't think so.

8 PRESIDING COMMISSIONER ENG: In terms of  
9 your personal history, so you were born and raised  
10 in Oregon?

11 INMATE DOWELL: Yes.

12 PRESIDING COMMISSIONER ENG: Okay. When did  
13 you come to California?

14 INMATE DOWELL: Seven -- '68 -- '69, '70.

15 PRESIDING COMMISSIONER ENG: And what  
16 brought you to California?

17 INMATE DOWELL: A job. My first wife and a  
18 job.

19 PRESIDING COMMISSIONER ENG: So in Oregon,  
20 okay, you completed the eleventh grade. Did you  
21 ever graduate from high school?

22 INMATE DOWELL: I took a completion test.

23 PRESIDING COMMISSIONER ENG: So did you get  
24 a GED, or no, or you --

25 INMATE DOWELL: I don't --

26 PRESIDING COMMISSIONER ENG: -- you did get  
27 a diploma though?

23

1 INMATE DOWELL: Yeah, I got a completion --

2 PRESIDING COMMISSIONER ENG: A completion.

3 Okay.

4 INMATE DOWELL: -- a certification of  
5 completion.

6 PRESIDING COMMISSIONER ENG: Okay. And then  
7 you did training as a maintenance mechanic also --

8 INMATE DOWELL: Yeah.

9 PRESIDING COMMISSIONER ENG: -- for the  
10 community college. Okay. It states here that --  
11 okay. You had a previous marriage to Neva,  
12 N-E-V-A, McKinley, M-C-capital-K-I-N-L-E-Y. So is  
13 that -- did I pronounce that correctly? Neva or  
14 Neva?

15 INMATE DOWELL: Neva, I believe.

16 PRESIDING COMMISSIONER ENG: Neva?

17 INMATE DOWELL: Yeah.

18 PRESIDING COMMISSIONER ENG: So that  
19 marriage to Neva, was that up in Oregon, and then  
20 you moved down here, or did you meet her down here  
21 in California?

22 INMATE DOWELL: I married her in Oregon.

23 PRESIDING COMMISSIONER ENG: You married her  
24 in Oregon.

25 INMATE DOWELL: Yeah.

26 PRESIDING COMMISSIONER ENG: Okay. And --  
27 okay. So you were married for five years and you

24

1 had two children. Were those children born in  
2 Oregon or born here in California?

3 INMATE DOWELL: One was born in Oregon and  
4 one was born in California.

5 PRESIDING COMMISSIONER ENG: Okay. So when  
6 you decided to uproot from Oregon you had one  
7 child and a wife and you moved to --

8 INMATE DOWELL: We didn't have any children  
9 at that time.

10 PRESIDING COMMISSIONER ENG: Oh.

11 INMATE DOWELL: We moved to California, had  
12 a children, moved back to Oregon, had a child,  
13 moved back to California.

14 PRESIDING COMMISSIONER ENG: Okay. Okay.  
15 And those two children, are they girls, boys?

16 INMATE DOWELL: One girl, one boy.

17 PRESIDING COMMISSIONER ENG: Okay. And how  
18 old are they now?

19 INMATE DOWELL: Thirty-seven the boy is, and  
20 34 for the girl.

21 PRESIDING COMMISSIONER ENG: Do you stay in  
22 contact with them?

23 INMATE DOWELL: Occasionally. We write once  
24 or twice a year.

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25 PRESIDING COMMISSIONER ENG: Where are they?

26 INMATE DOWELL: La Jolla.

27 PRESIDING COMMISSIONER ENG: Both of them?

25

1           INMATE DOWELL: No. The boy, my son lives  
2     in La Jolla, my -- and Dorothy lives in Arizona,  
3     in a little town outside Phoenix.

4           PRESIDING COMMISSIONER ENG: Do they both  
5     have families? Are they married or --

6           INMATE DOWELL: Yeah, they're both married.

7           PRESIDING COMMISSIONER ENG: And working,  
8     etcetera?

9           INMATE DOWELL: Yeah. Right.

10          PRESIDING COMMISSIONER ENG: Okay. And have  
11     they ever visited you in prison?

12          INMATE DOWELL: No. I ask that they don't.

13          PRESIDING COMMISSIONER ENG: But you talk to  
14     them?

15          INMATE DOWELL: Yes.

16          PRESIDING COMMISSIONER ENG: Do you ever  
17     talk to them about your life crime?

18          INMATE DOWELL: Yeah. They understand what  
19     happened.

20          PRESIDING COMMISSIONER ENG: You also have  
21     another two children that you had with Pauline  
22     Ramirez Dowell, who was your common law wife.

23          INMATE DOWELL: Right.

24          PRESIDING COMMISSIONER ENG: Okay. And  
25     ~~girls or boys?~~

26          INMATE DOWELL: Two boys.

27          PRESIDING COMMISSIONER ENG: Two boys.



26

1 INMATE DOWELL: Yes.

2 PRESIDING COMMISSIONER ENG: How old are  
3 they?

4 INMATE DOWELL: Twenty-four, the youngest  
5 one, and 27 I think -- 28 I believe is the oldest  
6 one.

7 PRESIDING COMMISSIONER ENG: Are you in  
8 touch with them?

9 INMATE DOWELL: Yeah.

10 PRESIDING COMMISSIONER ENG: Where are they?

11 INMATE DOWELL: One lives in Los Angeles.

12 PRESIDING COMMISSIONER ENG: Okay.

13 INMATE DOWELL: Lives with his mother  
14 actually, outside of Los Angeles.

15 PRESIDING COMMISSIONER ENG: How about the  
16 other one?

17 INMATE DOWELL: And then the oldest one's in  
18 prison.

19 PRESIDING COMMISSIONER ENG: He's in prison.

20 INMATE DOWELL: Uh-huh.

21 PRESIDING COMMISSIONER ENG: For what?

22 INMATE DOWELL: For great bodily injury.

23 PRESIDING COMMISSIONER ENG: Okay. So do  
24 you speak with either one?

25 INMATE DOWELL: Yeah.

26 PRESIDING COMMISSIONER ENG: Do you ever see  
27 them? Well, obviously the one in prison you're

27

1 not going to see for a while.

2 INMATE DOWELL: No.

3 PRESIDING COMMISSIONER ENG: Well, what  
4 about the younger one?

5 INMATE DOWELL: No, I don't see him, but I  
6 write to them, yeah.

7 PRESIDING COMMISSIONER ENG: He's never come  
8 up to visit?

9 INMATE DOWELL: No. I ask they don't come.  
10 to visit.

11 PRESIDING COMMISSIONER ENG: You don't want  
12 to see them.

13 INMATE DOWELL: I don't want to.

14 PRESIDING COMMISSIONER ENG: What about  
15 Pauline?

16 INMATE DOWELL: I write to her occasionally.  
17 She writes to me.

18 PRESIDING COMMISSIONER ENG: Have you talked  
19 about the life crime with Pauline?

20 INMATE DOWELL: Yes.

21 PRESIDING COMMISSIONER ENG: And about what  
22 happened?

23 INMATE DOWELL: Yes.

24 PRESIDING COMMISSIONER ENG: And what do you  
25 think about what you put her through that night?

26 INMATE DOWELL: I really feel really  
27 terrible about it. I apologized to her many

28

1 times. Every time I write her, matter of fact, I  
2 apologize to her again, even though this is one  
3 thing that through my AA I've learned to come  
4 around, but you can't really make amends for this  
5 kind of thing. No matter what you do for these  
6 people or anything, you can't take it back, you  
7 know, you just -- it's impossible, so -- and then  
8 it weighs on you. Every decision you make, you  
9 think about this, because it really -- it does  
10 weigh on you.

11 PRESIDING COMMISSIONER ENG: Well, there are  
12 consequences to everyone's actions, aren't there?

13 INMATE DOWELL: There most certainly is.

14 PRESIDING COMMISSIONER ENG: What about Mr.  
15 Winnet and who he left behind?

16 INMATE DOWELL: Yeah.

17 PRESIDING COMMISSIONER ENG: What have you  
18 thought about that?

19 INMATE DOWELL: He didn't have any family.  
20 At least that's what I've been told. But I paid  
21 for his funeral and whatever else I could do.

22 PRESIDING COMMISSIONER ENG: But what have  
23 you thought about him as a victim? Regardless of  
24 whether he had family living left, what have you  
25 thought about?

26 INMATE DOWELL: Well, I realize that this  
27 ended all his dreams, and as a person, I know that

29

1 he had dreams and which is the same as everybody  
2 else did, and when you kill somebody, well, then  
3 you take all that from them, and it puts a burden  
4 on you, and you can't -- and since you can't erase  
5 something like that, no matter what you do, no  
6 matter how bad it makes you feel, or anything  
7 else, you can't start -- it's over with. You  
8 can't stop it.

9 PRESIDING COMMISSIONER ENG: When you pulled  
10 out that shotgun, because I -- if my recollection  
11 is correct, that you had a handgun first?

12 INMATE DOWELL: Yes.

13 PRESIDING COMMISSIONER ENG: And I think  
14 both of you were shooting at each other?

15 INMATE DOWELL: Yes.

16 PRESIDING COMMISSIONER ENG: Did you hit  
17 anything at that point?

18 INMATE DOWELL: I'm not sure.

19 PRESIDING COMMISSIONER ENG: Okay. But then  
20 you went for the shotgun.

21 INMATE DOWELL: Yeah. Because I emptied the  
22 handgun.

23 PRESIDING COMMISSIONER ENG: Right. At that  
24 point did you want to kill him? Was that your  
25 intent?

26 INMATE DOWELL: Well, I was in the heat of  
27 the battle at that time, and, yes, I --

30

1           PRESIDING COMMISSIONER ENG: You wanted him  
2 dead?

3           INMATE DOWELL: Yeah.

4           PRESIDING COMMISSIONER ENG: Okay. So is  
5 there anything that I've left out in terms of your  
6 personal life or your background, or in terms of  
7 your previous convictions, etcetera? Is there  
8 anything that I've missed --

9           INMATE DOWELL: I don't think so.

10          PRESIDING COMMISSIONER ENG: -- that you'd  
11 like me to add or discuss?

12          INMATE DOWELL: Not that I'm aware of. I  
13 don't think you missed anything.

14          PRESIDING COMMISSIONER ENG: Okay. Okay.  
15 We'll move on, and Commissioner Filangeri will go  
16 over your post-conviction factors.

17          DEPUTY COMMISSIONER FILANGERI: Thank you,  
18 Commissioner. The purpose of this segment of the  
19 hearing is to detail your prison behavior since  
20 the last time you appeared before the Board. The  
21 records suggest that you were postponed on  
22 November of 2005 because there was no new psych  
23 report as had been ordered in 2003, which was your  
24 last actual hearing, July 17<sup>th</sup>. Does that sound  
25 right to you?

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26          INMATE DOWELL: That's correct, yes.

27          DEPUTY COMMISSIONER FILANGERI: I'm going to

31

1 be making reference to several documents along the  
2 way, the first of which is the report from the  
3 correctional counselor, I. Tate, T-A-T-E. It --  
4 his signature is not dated, but the report shows  
5 June 2006. Over on post-conviction factors  
6 there's a lengthy text covering your entire prison  
7 experience, from 12/30/83 when you were received  
8 from Los Angeles, to present. The only thing  
9 specific to your behavior since the last hearing  
10 starts about five lines up from the bottom of that  
11 section on page 5, saying that your period at the  
12 hearing was denied two years. The November 2005  
13 hearing was postponed. Case factors reviewed in  
14 absentia for annual review, programs not modified.  
15 Then we go down to therapy and self-help groups  
16 since the last hearing. It looks like you got  
17 certificates from Introduction to the Lathe,  
18 Introduction to Mailing Machines, Introduction to  
19 Bench Work. So you've been working in the --

20 INMATE DOWELL: In vocational Machine Shop.

21 DEPUTY COMMISSIONER FILANGERI: Vocational  
22 Machine Shop.

23 INMATE DOWELL: Right.

24 DEPUTY COMMISSIONER FILANGERI: That's

25 ~~terrific. And I saw of interest in there was the~~  
26 certificate of achievement from Maintenance and  
27 Operation of High Pressure Boiler. It was

1 actually a certificate of completion of a 12-month  
2 course in that; is that right?

3 INMATE DOWELL: That's correct, yes.

4 DEPUTY COMMISSIONER FILANGERI: That was in  
5 '89. And there was some sort of home study course  
6 on Modern Metal Cutting that you completed in  
7 September of 2002?

8 INMATE DOWELL: Yes.

9 DEPUTY COMMISSIONER FILANGERI: Was that  
10 correspondence?

11 INMATE DOWELL: Yes, it was correspondence.

12 DEPUTY COMMISSIONER FILANGERI: How'd you  
13 arrange that?

14 INMATE DOWELL: Through the vocational  
15 Machine Shop.

16 DEPUTY COMMISSIONER FILANGERI: Now you've  
17 had a lot of experience working in PIA. As I look  
18 through here, I saw stuff like -- well, maybe  
19 we've already covered it. I saw something in voc  
20 Machine on 2002 and 2003, and it was difficult for  
21 me to tell whether -- it looked like you were  
22 getting vocational Machine Shop credit and  
23 completing courses, but it looked like they also  
24 relied on you to repair things.

25 INMATE DOWELL: Yes.

---

26 DEPUTY COMMISSIONER FILANGERI: Was it kind  
27 of a two-way street there?

33

1 INMATE DOWELL: Yes.

2 DEPUTY COMMISSIONER FILANGERI: All right.

3 And you've had some experience repairing things in  
4 the past.

5 INMATE DOWELL: Yeah. I started the  
6 apprenticeship in 1962 actually to be a --

7 DEPUTY COMMISSIONER FILANGERI: On the  
8 street?

9 INMATE DOWELL: On the street, to be a  
10 machine -- a millwright machinist.

11 DEPUTY COMMISSIONER FILANGERI: I see. How  
12 far'd you get in that?

13 INMATE DOWELL: I worked in it for 12 years.

14 DEPUTY COMMISSIONER FILANGERI: The  
15 probation officer's report said that you were a  
16 manager in a motorcycle repair shop. Your duties  
17 involved --

18 INMATE DOWELL: Yeah, doing machine work.

19 DEPUTY COMMISSIONER FILANGERI: Repairing  
20 motorcycles.

21 INMATE DOWELL: Yeah.

22 DEPUTY COMMISSIONER FILANGERI: So you were  
23 actually fabricating parts for bikes?

24 INMATE DOWELL: That's right.

25 DEPUTY COMMISSIONER FILANGERI: What kind of  
26 bikes?

27 INMATE DOWELL: Harley-Davidsons, Hondas,